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No. 80-1240

In the Supreme Court of the United States

OCTOBER TERM, 1980

MICHAEL P. LANE, Director,
Illinois Department of Corrections,
Petitioner,

v.

LAWRENCE WILLIAMS and
OSCAR SOUTHALL,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED JANUARY 20, 1981.
CERTIORARI GRANTED JUNE 8, 1981.

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LAWRENCE WILLIAMS

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

LAWRENCE WILLIAMS

July 6, 1977 — Received Petition for Writ of Habeas Corpus and 1 copy.

July 6, 1977 — Filed Civil Cover Sheet.

July 6, 1977 — Filed petition for leave to file and to proceed in forma pauperis.

July 6, 1977 — Filed petitioner's exhibit re: records from Cook County, Illinois.

July 11, 1977 — Enter order dated July 8, 1977: Enter order granting petitioner leave to proceed in forma pauperis. Respondent is ordered to answer or otherwise plead within 20 days.

July 11, 1977 — Filed Peittion for writ of habeas corpus and 1 copy.

July 22, 1977 — Filed respondent's motion to dismiss or for summary judgment with supporting memorandum; exhibit A.

August 8, 1977 — Filed petitioner's answer to respondent's motion to dismiss or for summary judgment with supporting memorandum.

August 31, 1977 — Filed Reply to Petitioner's Answer; Notice; Exhibits.

January 6, 1978 — Enter order dated January 4, 1978: For the reasons stated in the attached Memorandum Opinion, respondent's motion to dismiss is denied and judgment will enter declaring void the mandatory parole term imposed on Lawrence Williams in No. 74-3339 in the Circuit Court of Cook County, Illinois and respondent is ordered to

release Lawrence Williams forthwith. (DRAFT. See attached Memorandum Opinion.) MARSHALL, J.

January 6, 1978 — Enter judgment pursuant to Rule 58 — by the Clerk.

January 10, 1978 — Filed Respondent's Notice and Motion for stay.

January 12, 1978 — Enter order dated Janury 10, 1978: Respondent's motion for a stay of the order of Judge Marshall dated January 4, 1978, ordering the release of the petitioner is granted to and until January 16, 1978. Respondent's motion to reconsider shall be filed by or on January 13, 1978. Cause set for hearing on respondent's motion for stay before Judge Marshall on January 16, 1978 at 9:00 a.m. — FLAUM, J.

January 12, 1978 — Filed Respondent's Motion to reconsider with attachment and Notice of motion.

January 17, 1978 — Enter order dated January 16, 1978: Order of January 4, 1978 is stayed until further order of court. Cause set for ruling on January 25, 1978 at 9:30 a.m. — MARSHALL, J.

January 31, 1978 — Filed Appearance of Martha Jenkins as counsel for plaintiff and Affidavit.

January 31, 1978 — Enter order dated January 27, 1978: Enter order appointing Martha Jenkins to represent plaintiff under Criminal Justice Act. Cause set for status hearing on February 6, 1978 at 9:30 a.m. — MARSHALL, J.

January 31, 1978 — Filed Plaintiff's Notice of Motion and Motion for Consolidation.

January 31, 1978 — Filed Plaintiff's Notice of Motion and Motion for leave to file amendment to §2254.

February 2, 1978 — Enter order dated January 27, 1978: For the reasons stated in the attached Memorandum Opinion, we hold that *United States ex rel. Baker v. Finkbeiner* is to be given full retroactive effect. Respondent's motion to reconsider is denied. (DRAFT. See attached Memorandum Opinion.) — MARSHALL, J.

February 24, 1978 — Filed Respondent's Notice of Appeal.

April 30, 1979 — Filed April 30, 1979 Opinions Nos. 78-1321, 78-1322, 78 C [*sic*] 1323, 78-1380.

April 30, 1979 — Filed April 30, 1979 Certified copy of order from the U.S.C.A., 7th Cir. dated March 13, 1979: . . . It is ordered and adjudged by this court that the judgment of the said District Court in these causes appealed from be and the same are hereby, REVERSED and REMANDED with directions . . .(to dismiss the petition but with [*sic*] prejudice . . . .)

May 17, 1979 — Enter order dated May 17, 1979: Status hearing held. Case assigned to Judge Marshall's past case calendar until further order of court. — MARSHALL, J.

October 12, 1979 — Filed October 12, 1979 Plaintiff's Notice of Motion: and Motion for Ruling expunging terms of Mandatory parole for petitioners, with Exhibits A & B attached.

October 12, 1979 — Enter order dated October 12, 1979: Respondent to answer petitioner's motion for expunging terms of mandatory parole by October 26, 1979. Reply to answer to be filed by November 2, 1979. Ruling to be made by mail. — MARSHALL, J.

October 26, 1979 — Filed October 26, 1979 Response (of defendants [*sic*]) to petitioners' motion for ruling expunging terms of mandatory parole for petitioners, and Notice.

November 2, 1979 — Filed November 2, 1979 Plaintiff's reply memorandun in support of petitioners' motion to expunge Mandatory Parole terms.

February 7, 1980 — Enter order dated February 1, 1980: For the reasons stated in the attached Memorandum Decision, we hold that the denial of leave to appeal in McCullim [*sic*], when considered with the precedent from the appellate courts, demonstrates anew the futility of a state remedy. Accordingly, judgment will enter expunging petitioners' mandatory parole terms. (DRAFT) MARSHALL, J.

February 8, 1980 — Enter order dated February 5, 1980: Judgment will enter declaring void the mandatory parole term imposed on Lawrence Williams in No. 74-3339 in the Circuit Court of Cook County, Illinois (DRAFT) MARSHALL, J.

February 27, 1980 — Filed February 26, 1980 Defendants' [*sic*] Motion to alter or amend the Judgment entered in the above entitled cases; Affidavit of Michael B. Weinstein; and Notice.

February 27, 1980 — Enter order dated February 26, 1980: Enter order granting respondent's motion to alter or amend in the above cases. — MARSHALL, J.

March 5, 1980 — Filed March 4, 1980 Defendant's [*sic*] Joint Notice of Appeal re: order of February 5, 1980.

March 5, 1980 — Forwarded March 5, 1980 Copy of Notice of Appeal, information sheet, and Copy of Docket to U.S.C.A., 7th Circuit.

November 25, 1980 — Filed certified copy of opinion and judgment of U.S.C.A., 7th Cir. dated October 22, 1980: It is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED IN PART [as to case numbers 77 C 2402 and 77 C 2184] AND REVERSED IN PART [as to case number 77 C 1937], in accordance with the opinion of this court filed this date.

PETITION FOR WRIT OF HABEAS CORPUS
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

PERSONS IN STATE CUSTODY

UNITED STATES OF AMERICA *ex rel.* LAWRENCE WILLIAMS,
Register #C-08051
Petitioner

Case No. 77 C 2402

-vs-

ERNEST MORRIS, Warden
Respondent

Instructions — Read Carefully

In order for this petition to receive consideration by the District Court, it shall be in writing (legibly handwritten or typewritten), signed by the petitioner and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary petitioner may finish his answer to a particular question on the reverse side of the page or on an additional blank page. Petitioner shall make it clear which question any such continued answer refers to.

Since every petition for habeas corpus must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Petitioners should, therefore, exercise care to assure that all answers are true and correct.

If the petition is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that petitioner will be unable to pay the fee and costs of the habeas corpus proceedings. When the petition is completed, *the original and one copy* shall be mailed to the Clerk of the District Court for the Northern District of Illinois.

1) Place of detention: Stateville Correctional Center

2) Name and location of court which imposed sentence: Cook County Criminal Court, 2600 so. California, Chicago, Illinois.

3) The indictment number or numbers (if known) upon which, and the offense or offenses for which, sentence was imposed: 74-3339. Burglary

4) The date upon which sentence was imposed and the terms of the sentence:

   a) 11 March 1975 . . . one (1) year to two (2) years

   b) _____

   c) _____

5) Check whether finding of guilty was made

   a) after plea of guilty xxxxx

   b) after a plea of not/guilty _____

   c) after a plea of *nolo contendere* _____

6) If you were found guilty after a plea of not guilty, check whether that finding was made by:

   a) a jury _____

   b) a judge without a jury _____

7) Did you appeal from the judgment of conviction or the imposition of sentence? No.

8) If you answered "yes" to (7), list

   a) the name of each court to which you appealed:

      I. _____

      II. _____

      III. _____

III. _____

b) the result in each court to which you appealed:

I. _____

II. _____

III. _____

c) the date of each result:

I. _____

II. _____

III. _____

d) if known, citations of any written opinion or orders entered pursuant to such results:

I. _____

II. _____

III. _____

9) If you answered "no" to (7), state your reasons for not so appealing.

a) Because of guilty plea.

b)

10) State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) The Petitioner is presently being held at the Stateville Correctional center in Joliet, Illinois, only pursuant to the so-called mandatory parole — Illinois Revised Statute Ch. 38, section 1005-8-1(e), and section 1003-3-9(a)(3)(i) which delineates the terms of recommitment under mandatory parole.

Petitioner is being held by the force of a 3-year mandatory parole term attached to the original sentence.

He has completed the maximun [*sic*] on his sentence, which he received as a result of guilty plea following plea bargaining sessions between Public Defenders, and the Illinois States Attorneys Office. The Petitioner was not advised that there would be an attached mandatory parole term to the original sentence.

Petitioner alleges that his present incarceration is therefore in violation of the Due Process Clause of the 14th Amendment to the U.S. Constitution, and of a right guaranteed by federal law pursuant to a Federal opinion in the 7th Circuit Court of Appeals: in *U.S.A. ex rel. Baker v. Finkbeiner*, No. 76-1918, decided March 17, 1977 before Circuit Judges Swygert, Tone & Wood, it was held that, given the circumstance of that petitioner's case, "... the failure of the prosecutor and the trial court to advise him of the mandatory parole term created a defect of constitutional dimensions in his guilty plea." (at p. 1 of the opinion).

(b)

(c)

11) State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Petitioner was arrested initially on 12/3/74 on a charge of burglary (see Exhibit 1 below). He remained in the Cook County Jail in Chicago untill [*sic*] 3/11/75 when he was given a sentence by Judge Phillip Romiti of one (1) year to two (2) years, under indictment # 74-3339 (see Exhibit 2). Petitioner accepted this sentence after plea bargaining between his Public Defender and the Sates [*sic*] Attorney. There was no mention of any madatory [*sic*] parole term, & this Petitioner was not informed that such a term was attached to his sentence untill [*sic*] apprpximately [*sic*] two months before his discharge date of 5/20/76.

While serving this mandatory parole term Petitioner was arrested on 3/3/77 on a charge that was later dismissed. Without any type of hearing concerning this mandatory parole Petitioner was sent to the Joliet Diagnostic Center, and then to the Stateville Correctional Center where he is now being held. Petitioner has serve the maximun [*sic*] on the one to two [*sic*].

Petitioner has attemped [*sic*] to obtain proof of his allegation that he was, at sentencing hearing alluded to in the foregoing Petition, not advised about an attached mandatory parole term, but he has been unable to obtain his transcripts of the sentencing hearing.

Petitioner requests, pursuant to 28 U.S.C.A. 2249, that the Court order Respondents to forward the transcripts, since in his incarerated [*sic*] state he can do no more than he has already done.

WHEREFORE Petitioner Lawrence Williams prays that this honorable Court grant him the following relief:

1. An order freeing him from the present control of Warden Morris, and all future liability under the sentence mentioned in the foregoing Petition;

2. An order to Respondent Morris, that he produce the Petitioner at any hearing(s) held by the Court on this issue;

3. An order that responsibility for proof in this issue be shifted to the Respondents, that they be required to forward to the Court this Petitioner's sentencing hearing transcripts;

4. Any further relief that Court deems appropriate and just in this natter [*sic*].

(b)

(c)

12) Prior to this petition have you filed with respect to this conviction:

(a) any petition in a state court under the Illinois Post-Conviction Hearing Act, Ill. Rev. Stat. ch. 38, sec. 122? no.

(b) any petition in a state court by way of statutory *coram nobis*. Ill. Rev. Stat. ch. 110, sec. 72? no.

(c) any petitions in state or federal courts for habeas corpus? no.

(d) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no.

(e) any other petitions, motions or applications in this or any other court? no.

13) If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

b) the name and location of the court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14) Has any ground set forth in (10) been previously presented to this or any other court, state or federal, in any petition, motion or application which you have filed? no.

15) If you answered "yes" to (14), identify:

(a) which grounds have been previously presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16) If any ground set forth in (10) has not previously been presented to any court, state or federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Petitioner brings this Petition before this Court because there is no remedy at state level: Scott v. Israel 361 N.E.2d 1108

(b)

(c)

17) Were you represented by an attorney at any time during the course of

(a) your arraignment and plea? Yes.

(b) your trial, if any? Yes.

(c) your sentencing? Yes.

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? XXXXXX

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction which you filed? XXXXXX

18) If you answered "yes" to one or more parts of (17), list

(a) the name and address of each attorney who represented you:

i. Public Defender

ii. Public Defender Office

iii. Public Defender

(b) the proceedings at which each such attorney represented you:

i. Same as above.

ii. _____

iii. _____

In Forma Pauperis Affidavit

(see instructions, page 1 of this form)

/s/ Lawrence Williams
Signature of Affiant

)
) ss
)

/s/ Lawrence Williams, being first sworn under oath, presents that he has subscribed to the above and does state that the information therein is true and correct to the best of his knowledge and belief.

/s/ Lawrence Williams
Signature of Affiant

SUBSCRIBED AND SWORN to
before me this 30th day
of June, 1977.

/s/ Dennis R. Math
Notary Public

My commission expires

Nov. 16, 1980

OFFICE OF THE STATE'S ATTORNEY
COOK COUNTY, ILLINOIS
CHICAGO 60608

BERNARD CAREY
STATE'S ATTORNEY

CRIMINAL DIVISION
2600 SOUTH CALIFORNIA AVENUE

March 14, 1975

DEFENDANT: Lawrence Williams AGE: 36

INDICTMENT NO.	CHARGE	SENTENCE
74-3339	Burglary	1 to 2 yrs., I.S.P. NEW CODE

STATE'S RECOMMENDATION: SAME

JUDGE: Philip Romiti

DATE SENTENCED: March 11, 1975

TYPE OF TRIAL: Plea of Guilty

REPRESENTED BY: Ronald Menaker, Assistant Public Defender

COMPLAINING WITNESS: John Tacneau
5039 S. Prairie
Chicago, Illinois

ARRESTING OFFICERS: Off. James Sunberg #7961
2nd District
Chicago Police Department

ASSISTANT STATE'S ATTORNEY:
Charles B. Burch

IN RE: LAWRENCE WILLIAMS
INDICTMENT NO. 74-3339

OFFICIAL STATEMENT OF FACTS

The facts in this Indictment are briefly as follows:

On June 20, 1973 at 6:30 a.m., the arresting officer responded to a burglary alarm at the tavern located at 5059 S. Prairie. The officer found the defendant sitting in a booth with a bag of money next to him. The rear bathroom window had been broken and the coin-operated machines had been damaged.

BERNARD CAREY
State's Attorney

By: /s/ Charles B. Burch
Assistant State's Attorney

CBB:va

STATE OF ILLINOIS)
COUNTY OF COOK) ss.

The JUNE , 1974 Grand Jury of the Circuit Court of Cook County.

79506

The Grand Jurors chosen, selected, and sworn, in and for the County of Cook, in the State of Illinois in the name and by the authority of the People of the State of Illinois, upon their oaths present that on June 20th., 1973 at and within said County

Lawrence Williams

RECEIVED AT DIAGNOSTIC DEPOT
JOLIET MAR 14 1975

committed the offense of burglary

in that he, without authority, knowingly entered into a building, to wit: tavern of John S. Tacneau with the intent to commit the crime of theft therein, in violation of Chapter 38, Section 19-1, of the Illinois Revised Statutes 1971, contrary to the statute, and against the peace and dignity of the same People of the State of Illinois.

/s/ Bernard Carey
State's Attorney

(Back of Indictment omitted in printing)

MORGAN M. FINLEY CLERK OF THE
CIRCUIT COURT COOK COUNTY

Mittimus Imprisonment In A State Penal Institution

UNITED STATES OF AMERICA

IN THE CIRCUIT COURT OF COOK COUNTY ILLINOIS
COUNTY DEPT. CRIMINAL DIV./DISTR.

Proceedings and Judgments before the Circuit Court of Cook, County Illinois

2600 S. CALIFORNIA, Illinois, Branch ____ on 3/11/75

Present: Honorable PHILIP ROMITI
One of the Judges of the Circuit Court of Cook County

MORGAN M. FINLEY, CLERK
BERNARD CAREY, State's Attorney
RICHARD J. ELROD, Sheriff

THE PEOPLE OF THE STATE OF ILLINOIS Indictment or Case
(Plaintifff) #74-3339

LAWRENCE WILLIAMS Burglary
(Defendant)

Charge: Chapter 38 Section 19 Paragraph 1 of the Illinois Revised Statutes

The Offense of BURGLARY, IN MANNER AND FORM AS CHARGED IN THE INDICTMENT.

The defendant WAS represented by an attorney.

The Court adjudged defendant guilty on the PLEA.

The following sentence IS NOT a condition of probation

ADULT DIVISION:

BECAUSE OF THE JUDGMENT OF GUILTY IT IS ORDERED THAT THE DEFENDANT LAWRENCE WILLIAMS is sentenced for the INDEFINITE TERM XXXXX or the term of not less than ONE YEAR nor more than TWO YEARS and committed to the custody of the Adult Division of the Department of Corrections for confinement in the ILLINOIS DEPARTMENT OF CORRECTIONS

* * *

THE SHERIFF OF COOK COUNTY is commanded to take the defendant LAWRENCE WILLIAMS into his custody and deliver (him)(her) to the aforesaid Department of Corrections.

THE DEPARTMENT OF CORRECTIONS is commanded to take the defendant LAWRENCE WILLIAMS and confine (him)(her) in the manner provided by law until the above sentence is fulfilled.

(Clerk's Certification omitted in printing)

(Back of mittimus omitted in printing)

EXHIBIT A

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT – CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS	)	
vs.	)	Indictment No. 74-3339
	)	Charge: Burglary
LAWRENCE WILLIAMS	)	

CHANGE OF PLEA

REPORT OF PROCEEDINGS had pursuant to the provisions of Chapter 38, Article 115-2, Illinois Revised Statutes, before the Honorable PHILIP ROMITI, Judge of the Criminal Division, on the 11th Day of March, A.D. 1975.

APPEARANCES:

HON. C. BERNARD CAREY,
State's Attorney of Cook County, by
MR. CHARLES B. BURCH and
MR. NICHOLAS DE JOHN,
Assistant State's Attorneys,
appeared for the People;

MR. JAMES J. DOHERTY,
Public Defender of Cook County, by

MR. RONALD MENAKER,
Assistant Public Defender,
appeared for the Defendant.

[2] THE CLERK: Lawrence Williams.

MR. MENAKER: Judge, Lawrence Williams is before the Court on Indictment 74-3339. I believe this matter last time was up I requested a conference and am now requesting a conference this morning.

THE COURT: Have you had a dialog with the defendant?

MR. MENAKER: I believe we have.

THE COURT: We talked to you about whether you wanted Mr. Menaker to discuss the case with the State to see if they could dispose of it without trial and you had agreed to that, had you not?

THE DEFENDANT: Yes, Your Honor.

THE COURT: We will pass it and you can continue your conference.

(After an interval of time, the following proceedings were had:)

THE CLERK: Lawrence Williams.

MR. MENAKER: Judge, may the record reflect that Lawrence Williams is before the Court pursuant to Indictment 74-3339 alleging the offense of burglary.

I have had an opportunity not only today but on other occasions to confer with Mr. Burch of the State's Attorney's office and with my client Mr. Williams and at this time after I have informed the [3] Court and the Court has in fact been a party to this conference pursuant to the recommendation being made by Mr. Burch, Mr. Williams now is asking leave of court to withdraw his previously entered plea of not guilty and enter a plea of guilty thereto.

THE COURT: Q All right. Mr. Williams, before we proceed any further let me ask you whether you understand

and appreciate that under the 5th Amendment of the Constitution that you have a right to remain silent and not to say anything at all which would in any way tend to incriminate you, you understand that?

A Yes, Your Honor.

Q Mr. Menaker indicates to me that you are prepared to or that you wish to withdraw your plea of not guilty which you had entered to Indictment 74-3339 and to enter a plea of guilty on that indictment, is that correct?

A Yes, Your Honor.

Q And further it is my understanding from what Mr. Menaker said and indeed the record will obviously reflect there is a change of plea which is based upon certain discussions that were had by Mr. Menaker and Mr. Burch and after they had their discussions they advised the Court as to what their agreements were and [4] it is based upon those recommendations or those discussions and agreements that you now indicate you wish to change your plea, is that correct?

A Yes, Your Honor.

THE COURT: Mr. Burch, would you put the gist of the conference on the record, please.

MR. BURCH: Yes, I will, Judge. I believe I talked with Mr. Menaker several times about this case. We have discussed Lawrence Williams and his background. We have also discussed the case and having discussed all those things I indicated to Mr. Menaker I believe in the last court date that the State would be willing to recommend a period of not less than one nor more than two years in the Illinois State Penitentiary if Mr. Lawrence Williams pleads guilty.

THE COURT: Mr.Menaker, is that your understanding and agreement?

MR. MENAKER: Yes.

THE COURT: Q Mr. Williams, after those conversations had taken place did Mr. Menaker then talk to you?

A Yes, Your Honor.

Q Did he tell you what agreement he had reached, the State was going to recommend or that the agreement was that upon a plea of guilty they would be recommending [5] to the Court a sentence of not less than one year nor more than two years?

A Yes, Your Honor.

Q The Court was told that and the Court indicated and will indicate to you now that conditionally it would accept the recommendation. By that I mean I would accept it unless I were to hear something during the course of these proceedings that I have had no notice of at all which might cause me to change my mind and if that were to happen then of course you would be permitted to withdraw your plea of guilty, you understand?

A Yes, sir.

Q Now you understand, sir, that you need not change your plea if you don't want to, that you can continue to plead not guilty?

A Yes, sir.

Q And you are changing it because you find the agreement is acceptable to you?

A Yes, Your Honor.

Q Now Indictment 74-3339 charges that on June 20th of 1973 that Lawrence Williams committed the offense of burglary in that he without authority knowingly entered into the building, to-wit the tavern of John Stacneau, S-t-a-c-n-e-a-u, with the intent to commit [6] therein the crime of theft in violation of Chapter 38, Section 19-1 of the Illinois Revised Statutes of 1973. Do you understand the charge?

A Yes.

Q And it is to this indictment and to this charge then that you now indicate that you wish to plead guilty?

A Yes, Your Honor.

Q You do understand, do you, Mr. Williams, that the State has the burden in a criminal case to prove a person guilty beyond a reasonable doubt, you understand that?

A Yes, Your Honor.

Q And you understand, do you, that when you plead guilty to the indictment, to the charge that you relieve the State of that burden, they no longer have to prove you guilty beyond a reasonable doubt, you understand that?

A Yes, Your Honor.

Q And also Mr. Williams you understand that our Constitution provides that whenever a person is charged with a crime that he has a right to a trial by jury, you understand that?

A Yes, Your Honor.

Q And what does a jury trial mean to you? What is your understanding of a jury trial?

[7] A That if I am found guilty, Your Honor, that I can be sentenced to a maximum –

Q But what is your understanding of a jury trial or a trial by jury?

MR. MENAKER: Do you know what 12 people sitting in a box is?

THE DEFENDANT: Yes.

MR. MENAKER: You understand?

THE COURT: Q You understand that what we are talking about is you would have a right to have 12 people picked and those 12 people would then sit in the jury box that you see in the court room and they would listen to the witnesses and they testify and then they would decide your innocence or guilt, you understand that?

A Yes.

Q And do you understand that when you plead guilty to the indictment that you would be waiving or giving up that right to a jury trial?

A Yes, Your Honor.

Q I'm going to hand to Mr. Menaker a form which is entitled Jury Waiver and it reads, "I, the undersigned, do hereby waive jury trial and submit the above entitled cause to

the Court for hearing." If that is what you want if you would sign that, please, after Mr. Menaker [8] gives it to you.

All right, Mr. Clerk, waiver of jury may be filed.

Q You understand that one could waive or give up this right to a jury trial that we just talked about?

A Yes, sir.

Q And then decide to have this case heard in what we call a bench trial, you understand that?

A Yes, sir.

Q You understand what a bench trial is as distinguished from a jury trial?

A Yes, Your Honor.

Q What does that mean?

A Like now.

Q Well, except it's like now except that witnesses would be coming in and a Judge instead of a jury would listen to the witnesses and then the Judge instead of a jury would decide your innocence or guilt.

A Yes, sir.

Q But you understand you would be giving up that right also?

A Yes, Your Honor.

Q What I'm trying to find out is whether you understand, Mr. Williams, that when you plead guilty [9] to an indictment or you plead guilty to the charge that there is not going to be a jury trial or a bench trial or any kind of trial, there is not going to be any trial at all, you understand that?

A Yes.

Q There would be no witnesses coming in, there won't be any trial at all, right?

A Right.

Q Another right which a person has once he is charged with a crime is a right that we refer to or we call confrontation. Now that means, Mr. Williams, that you would have a right to have those witnesses against you come into this court

room and you would have a right to face those witnesses, have them sworn and take the witness stand and testify and then you would have a right to cross examine those witnesses, you understand?

A Yes, sir.

Q So that those witnesses that Mr. Burch had indicated — I don't think I asked you to do it or he will indicate who would come in and testify in a certain way that they would, you would have a right to have those witnesses come in and to testify and to have the witnesses against you testify and then cross [10] examine the witnesses, right?

A Right.

Q And having said that it might be a good point for me to ask Mr. Burch to inform the Court as to the facts out of which the indictment arose and perhaps as to what the witnesses would testify were they called.

MR. BURCH: Judge, I believe there will be a stipulation by and between the parties in this matter, Mr. Lawrence Williams, through his attorney, Mr. Ron Menaker in this court room and the People of the State of Illinois by and through the Assistant State's Attorney in this court room, Charles B. Burch, that on the 20th of June, 1973, at approximately 6:30 A.M. at the address of 5059 South Prairie which is in the City of Chicago, Cook County, State of Illinois, that Officer James Sunberg and his partner Officer Hile, H-i-l-e, they were called to that location at 5059 South Prairie in the City of Chicago over their radio and the call was a burglary in progress.

They went to that location and at that time they found Lawrence Williams sitting in a booth in the premises there which was I believe a tavern. Next to him on the floor was a bag which was full of an amount of United States currency, approximately $172.00 [11] in nickels, dimes and quarters.

The officers examined at that time various machines and places which would have money in them and found that

several coin boxes including the cigarette machine had been broken into and the coins removed. At that time Mr. Lawrence Williams was placed under arrest and brought into the station for processing.

Judge, if Mr. John C. Stacneau who was the manager and part owner of the store-tavern at 5059 South Prairie in the City of Chicago were called to testify he would testify if called that he is indeed the manager and part owner of the premises there, that this is an establishment which sells liquor and other items.

He would further testify that the establishment was closed at 6:30 A.M. in the morning on that date, June 20th, 1973, and he did not give permission to Mr. Lawrence Williams to enter the premises nor to take any money or any other items from the premises at that time. So stipulated, counsel?

MR. MENAKER: So stipulated.

MR. BURCH: Could we have a stipulation as to Mr. Williams age?

MR. MENAKER: 37 years old.

[12] MR. BURCH: So stipulated Mr. Williams is 37 years, Judge. May we have a stipulation that the indictment is true and correct and sufficient in law and in fact to support a finding of guilty of the charge of burglary?

MR. MENAKER: So stipulated.

THE COURT: All right, Mr. Williams, you understand then as we started to say earlier that the witnesses that Mr. Burch indicated would testify in a certain way that you would have a right to have those witnesses come in and have those witnesses cross examined, you understand that?

A Yes.

Q You understand you would be giving up that right also?

A Yes, Your Honor.

Q And you understand that when you plead guilty to the indictment that you admit the charge in the indictment, the facts as they relate to that charge as they were just recited by Mr. Burch?

A Yes.

Q Before we go any further let me advise you as to the penalty which the statute provides for the offense of burglary.

The Code of Corrections provides that upon a [13] finding of guilty of burglary that you could be sentenced to the penitentiary for a period of not less than one year nor more than twenty years or any number of years between one and twenty and a $10,000 fine. Do you understand that?

A Yes.

Q I think you have already indicated that you had complete understanding of the conference that Mr. Menaker had with Mr. Burch and the agreements that they have arrived at?

A Yes, Your Honor.

Q Is there anything at all, Mr. Williams, now after we have gone over these various rights that an individual has once he is charged with an offense, anything about those rights that you now feel that you don't understand and that you might want either Mr. Menaker or myself to explain further?

A No, Your Honor.

Q I take it then that you have told me that you understand that when you plead guilty to the indictment you admit the charge and the facts as they relate to the charges as they were recited to me?

A Yes, Your Honor.

Q And you understand that by pleading guilty you [14] are giving up your right to a jury trial, a bench trial or any kind of trial, is that correct?

A Yes, Your Honor.

Q And that by pleading guilty you are waiving your right to cross examine the witnesses, your right to testify for yourself if you wish to or your right to call any witness to testify for you?

A Yes, Your Honor.

Q And you understand the penalty and you understand the agreement?

A Yes, Your Honor.

Q And you understand that you need not change your plea if you don't wish to but you can continue to plead not guilty?

A Yes, sir.

Q Understanding all of these things then do you still wish to plead guilty?

A Yes.

THE COURT: Let the record show that the defendant has been advised of the consequences of his plea and after having been so advised he persists therein. The plea, therefore, will be accepted and there will be a finding of guilty of burglary in manner and form as charged in Indictment 74-3339 and there will be a judgment [15] on that finding.

Q Mr. Williams, the Code of Corrections provides that before the Court proceeds with any sentencing that a defendant has a right to have what we call a pre-sentence investigation and pre-sentence report. That means that certain information would be gotten from you concerning your background, your social background, your educational background, your work background, general history and an investigation would be conducted based on the information they receive from you and then they would prepare a written report.

Now we would get a copy of that written report and we would use that for whatever help it might be to us in arriving at what we feel would be a proper sentence in the case. Do you understand that?

A Yes, Your Honor.

Q That is a right, of course, like any other right which a person has which can be waived if he wishes to and I ask you what your position is in that area.

MR. MENAKER: May I have a moment, Judge?

THE COURT: Yes.

THE DEFENDANT: I will waive it, Your Honor.

THE COURT: I am going to for the record then give to Mr. Menaker a form that I'm going to ask you to sign [16] if that is your wish and it simply reads: "I, the undersigned, do hereby waive my right to the pre-sentence investigation and written report."

MR. MENAKER: Here, Your Honor.

THE COURT: Waiver of pre-sentence report will be filed. Aggravation and mitigation.

MR. BURCH: Judge, I believe Your Honor is aware of the facts as I read them in the record as far as the basis of this particular charge.

Mr. Williams does have a history of criminal convictions including the 10th of October, 1972, pleading guilty to an attempt theft. He received a year to a year and a day from Judge Garippo. We would limit our aggravation to that, Judge. I simply state taking into account the fact this was a commercial rather than a domicile of an individual or home of an individual I think it was probably the factor which most weighed on my mind in terms of the light sentence which I thought Mr. Williams was receiving.

However, we took into account the fact that it was a commercial premises rather than a home and I believe that was the reason why I recommended the one to two years.

THE COURT: Mr. Menaker.

[17] MR. MENAKER: May I have Mr. Williams sworn, please?

THE COURT: Yes.

LAWRENCE WILLIAMS

the defendant herein, called on his own behalf, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MENAKER:

Q Would you kindly state your name, please, and speak loud so myself and the Judge and the court reporter can hear you?

A Lawrence Williams.

Q Mr. Williams, you are 37 years old, is that correct?

A Yes.

Q And you are the defendant in this matter, are you not?

A Yes.

Q Mr. Williams, prior to your arrest in this matter were you working?

A Yes, part time.

Q And would you tell the Court where you were working?

A Williams restaurant.

[18] Q Where is Williams restaurant located?

A 437 West 63rd Street.

Q And what were your responsibilities and duties at the restaurant?

A Part time cook.

Q For how long a period had you been doing that?

A About three years.

Q Mr. Williams, are you single or married?

A Single.

Q Do you support a family of any nature?

A I have a daughter.

Q How old is your daughter?

A Eight years old.

Q Mr. Williams, how much education have you had?

A 12 years.

Q And you are a high school graduate?

A Yes.

Q Is that in the City of Chicago?

A Yes.

Q What high school did you attend?

A Du Sable.

Q Did you have any education after high school in any way, trade or college or anything of that nature?

A No.

[19] Q Have you ever served in the armed forces?

A No.

MR. MENAKER: Judge, that would be the extent of mitigation. I would ask in view of the circumstances to abide or consider the State's recommendation.

THE COURT: Q Mr. Williams, is there anything that you would like to add or anything you would like to say to the Court?

A No, Your Honor.

THE COURT: All right. The Court certainly has heard nothing during the course of these proceedings which would be different from what had been advised earlier in the conference and the Court can accept the agreement entered into between the State and the defense counsel.

Accordingly, Lawrence Williams, it is the sentence of this Court that you be confined to the penitentiary for a period of not less than one year nor more than two years and you are hereby remanded to the custody of the Illinois Department of Corrections.

MR. MENAKER: Judge, may I address myself on one further point?

THE COURT: Yes.

MR. MENAKER: A review of the half sheet indicates there has been a bond forfeiture resulting from Mr. [20] Williams incarceration pending this disposition. Mr. Williams has asked me the possibility of this Court considering — there has been a transfer of funds and judgment. Would the Court if appropriate motions were filed consider in any way reinstating that bail and allowing him to have the funds?

THE COURT: The Court's position has been that once there has been a judgment entered and a transfer of funds then properly that matter should be taken up before the Presiding Judge.

MR. MENAKER: Judge Power?

THE COURT: Yes.

(Which were all of the proceedings had upon the above entitled change of plea.)

(Court reporter's certificate omitted in printing)

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Honorable Prentice H. Marshall

No. 77 C 2402 January 4, 1978

UNITED STATES OF AMERICA
ex rel. LAWRENCE WILLIAMS

v.

ERNEST MORRIS, Warden

Order

* * *

For the reasons stated in the attached memorandum opinion, respondent's motion to dismiss is denied and judgment will enter declaring void the mandatory parole term imposed on Lawrence Williams in No. 74-3339 in the Circuit Court of Cook County, Illinois and respondent is ordered to release Lawrence Williams forthwith.

(DRAFT. See attached Memorandum Opinion.)

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Civil Action File No. 77 C 2402

U.S.A. ex rel. LAWRENCE WILLIAMS)
) JUDGMENT
vs.)
)
ERNEST MORRIS

This action came on for (hearing) before the Court, Honorable Prentice H. Marshall, United States District Judge, presiding, and the issues having been duly (heard) and a decision having been duly rendered,

It is Ordered and Adjudged respondent's motion to dismiss is denied and judgment will enter delcaring [*sic*] void the mandatory parole term imposed on Lawrence Williams in No. 74-3339 in the Circuit Court of Cook County, Illinois and respondent is ordered to release Lawrence Williams forthwith.

Dated at Chicago, Illinois, this 4th day of January, 1978.

H. STUART CUNNINGHAM
Clerk of Court

By: /s/ Rita L. Dumas
Deputy Clerk

(Title omitted in printing)

MOTION FOR CONSOLIDATION

Petitioners in each of the three above captioned cases, by their counsel, move this Court for an Order pursuant to Rule

42(a) consolidating the cases for purposes of further proceedings herein as there are no questions of fact, but there are issues of law common to the three cases.

Respectfully submitted,

/s/ Martha M. Jenkins
77 W. Washington Street
Chicago, Illinois 60602
Attorney for Petitioners

(Notice of Motion and Certificate of Service omitted in printing)

(Title omitted in printing)

NOTICE OF APPEAL

Notice is hereby given that respondents hereby appeal to the United States Court of Appeals for the Seventh Circuit from an order of January 4, 1978 entered herein granting a writ of *habeas corpus* and from the final order of January 27, 1978, entered herein denying respondent's motion to reconsider.

Respectfully submitted,

WILLIAM J. SCOTT
Attorney General
State of Illinois

By: /s/ Patrick J. Calihan
Assistant Attorney General
188 W. Randolph St., Suite 2200
Chicago, Illinois 60601
(312) 793-2570

(Notice and affidavit of service omitted in printing)

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Honorable Prentice H. Marshall

Feb. 5, 1980

Lawrence Williams v. Ernest Morris

Judgment Order

* * *

Judgment will enter declaring void the mandatory parole term imposed on Lawrence Williams in No. 74-3339 in the Circuit Court of Cook County, Illinois. Draft

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA ex rel.
LAWRENCE WILLIAMS,
Petitioner,

v. No. 77 C 2402

ERNEST MORRIS, Warden,
Respondent.

UNITED STATES OF AMERICA ex rel.
OSCAR SOUTHALL,
Petitioner,

v. No. 77 C 2184

THADDEUS E. PINKNEY, Warden, Pontiac Correctional Center,
Respondent.

UNITED STATES OF AMERICA ex rel.
EMANUEL WILLIAMS,
Petitioner,
v. No. 77 C 1937

PEOPLE OF THE STATE OF ILLINOIS,
Respondents.

JUDGMENT

In 77 C 2402, United States of America ex rel. *Lawrence Williams v. Ernest Morris*, Warden, judgment will enter declaring void the mandatory parole term imposed on Lawrence Williams in No. 74-3339 in the Circuit Court of Cook County, Illinois.

In 77 C 2184, United States of America ex rel. *Oscar Southall v. Thaddeus E. Pinkney*, Warden, Pontiac Correctional Center, judgment will enter declaring void the mandatory parole term imposed on Oscar Southall in No. 75-228 in the Circuit Court of Cook County, Illinois, and respondent is ordered to release Oscar Southall forthwith from any detainer or detention occasioned by the mandatory parole term imposed in No. 75-228.

In 77 C 1937, United States of America ex rel. *Emanuel Williams v. State of Illinois*, judgment will enter declaring void the mandatory parole terms imposed on Emanual Williams in No. 74-2032 in the Circuit Court of Cook County, Illinois and the mandatory parole term imposed on Emanuel Williams in No. 74-951 in the Circuit Court of Cook County, Illinois.

ENTER:

/s/ Prentice H. Marshall
United States District Judge

DATED: February 5, 1980

(Title omitted in printing)

MOTION TO ALTER OR AMEND THE JUDGMENTS ENTERED IN THE ABOVE-ENTITLED CASES

Now come the respondents, by their attorney, William J. Scott, Attorney General of the State of Illinois, and, pursuant to Rule 59(e), Federal Rules of Civil Procedure, respectfully move this Court to alter or amend the judgments entered on February 8, 1980, in the above-entitled cases, so as to reflect that said rulings incorporate the prior rulings on the merits of each Petition entered on January 4, 1978. *See United States ex rel. Williams v. Morris,* 447 F. Supp. 95 (N.D. Ill. 1978).

An affidavit of counsel in support of this Motion is attached hereto.

Respectfully submitted

WILLIAM J. SCOTT
Attorney General
State of Illinois

By: /s/ Michael B. Weinstein
Assistant Attorney General
188 W. Randolph St., Suite 2200
Chicago, Illinois 60601
(312) 793-2570

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

AFFIDAVIT

Michael B. Weinstein, being first duly sworn on oath, deposes and states as follows:

1. That your affiant is an Assistant Attorney General

assigned to the Criminal Justice Division of the Office of the Attorney General of Illinois.

2. That your affiant is the counsel for the respondents in the above-entitled cases.

3. That on February 1, 1980, in entering an oral judgment in favor of the petitioners, this Honorable Court inquired as to the custodial status of petitioner Oscar Southall (Docket No. 77 C 2184).

4. That your affiant has contacted the Illinois Prison Review Board and has been informed that petitioner Southall, as well as petitioners L. Williams and E. Williams, are no longer in the custody of the Illinois Department of Corrections.

5. That in view of the foregoing facts, said petitioners would apparently not be able to avail themselves of the remedy provided by the Illinois Post-Conviction Hearing Act. *See Ill. Rev. Stat.*, 1979, ch. 38, §122-1. ("Any person *imprisoned in the penitentiary* . . . may institute a proceeding under this Article.")

6. That respondents, therefore, do not intend to further litigate the issue pertaining to exhaustion of available state court remedies.

7. That respondents, however, do intend to appeal the factual conclusions which this Court used as a basis for granting the respective Writs of Habeas Corpus.

WHEREFORE, your affiant moves this Court to alter or amend its judgments in the above-entitled cases, awarding the respective Writs of Habeas Corpus, so as to incorporate its prior rulings on the merits of each petitioner's claim (which prior rulings were entered on January 4, 1978). *See United States ex rel. Williams v. Morris*, 447 U.S. 95 (N.D. Ill. 1978).

/s/ Michael B. Weinstein

SUBSCRIBED and SWORN to
before me this 19th day
of February, 1980.

/s/ Gail D. Houdek
NOTARY PUBLIC

(Notice and affidavit of service omitted in printing)

(Title omitted in printing)

Honorable Prentice H. Marshall

February 26, 1980

* * *

Enter order granting respondents motion to alter or amend the judgments entered in the above cases.

(Title omitted in printing)

JOINT NOTICE OF APPEAL

Notice is hereby given that ERNEST MORRIS, THADDEUS E. PINKNEY and the PEOPLE OF THE STATE OF ILLINOIS, respondents above named, hereby appeal to the United States Court of Appeals for the Seventh Circuit from the final judgments entered in these consolidated actions on the 5th day of February, 1980, as well as the subsequent orders entered in these consolidated actions on the 26th day of February, 1980.

Respectfully submitted,

WILLIAM J. SCOTT
Attorney General
State of Illinois

By: /s/ Michael B. Weinstein
Assistant Attorney General
188 W. Randolph Street
(Suite 2200)
Chicago, Illinois 60601
(312) 793-2570

Attorney for respondents.

(Notice and affidavit of service omitted in printing)

Opinion by Judge Cummings

JUDGMENT — ORAL ARGUMENT

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

October 22, 1980

Before

Hon. WALTER J. CUMMINGS, Circuit Judge
Hon. ROBERT A. SPRECHER, Circuit Judge
Hon. WILLIAM J. BAUER, Circuit Judge

UNITED STATES OF AMERICA ex rel. LAWRENCE WILLIAMS, OSCAR SOUTHALL and EMANUEL WILLIAMS, Petitioners-Appellees, No. 80-1296 vs. ERNEST MORRIS, Warden, Stateville Correctional Center; THADDEUS E. PINKNEY, Warden, Pontiac Correctional Center; and PEOPLE OF THE STATE OF ILLINOIS, Respondents-Appellants.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. Nos. 77-C-2402, 77-C-2184 and 77-C-1937 Prentice H. Marshall, Judge

This cause was heard on the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED IN PART AND REVERSED IN PART, in accordance with the opinion of this court filed this date.

(Certification omitted in printing)

In the
United States Court of Appeals
For the Seventh Circuit

No. 80-1296

UNITED STATES OF AMERICA ex rel. LAWRENCE WILLIAMS, OSCAR SOUTHALL and EMANUEL WILLIAMS,

Petitioners-Appellees,

v.

ERNEST MORRIS, Warden, Stateville Correctional Center; THADDEUS E. PINKNEY, Warden, Pontiac Correctional Center; and PEOPLE OF THE STATE OF ILLINOIS,

Respondents-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
Nos. 77 C 2402, 77 C 2184 and 77 C 1937—Prentice H. Marshall, *Judge.*

ARGUED SEPTEMBER 16, 1980—DECIDED OCTOBER 22, 1980

Before CUMMINGS, SPRECHER and BAUER, *Circuit Judges.*

CUMMINGS, *Circuit Judge*. Petitioners, who pleaded guilty in their state court criminal prosecutions, sought writs of

habeas corpus claiming that state judges violated petitioners' Fourteenth Amendment rights by failing to inform them that a mandatory three-year parole term would automatically attach to the sentences they were promised under plea agreements. The petitions were consolidated below, and District Judge Prentice Marshall, finding *United States* ex rel. *Baker v. Finkbeiner*, 551 F.2d 180 (7th Cir. 1977), controlling, held that petitioners were entitled to relief. 447 F. Supp. 95 (N.D. Ill. 1978) (*Williams I*).

On appeal, this Court reversed, holding that petitioners had failed to exhaust an available state court remedy. 594 F2d. 614 (7th Cir. 1979).[1] Petitioners thereafter renewed their requests for expungement of their mandatory parole terms, contending that a subsequent Illinois Supreme Court decision showed conclusively that no state court remedy was available. Judge Marshall agreed and for the reasons set forth in *Williams I* granted the relief sought. 483 F. Supp. 776 (N.D. Ill. 1980) (*Williams II*). The State appeals on the merits.[2] We affirm in part and reverse in part.

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[1] We also held that the petitions were not moot by reason of the fact that two of the petitioners had completed their entire sentence periods including the added parole term and the other had been discharged in compliance with the order of the district court because there remained collateral consequences which might have lingering effects since all three petitioners were found guilty of parole violations. 594 F.2d at 615. See *Carafas v. LaVelle*, 391 U.S. 234, 238-240; *Sibron v. New York*, 292 U.S. 40, 50-58.

[2] The State does not agree with Judge Marshall's conclusion on the exhaustion question but does not raise it on appeal because "none of the petitioners are presently in the custody of the Illinois Department of Corrections *** [and] are, therefore, precluded, by Illinois law, from filing a postconviction petition" (Br. 12).

I

Lawrence Williams

Petitioner Lawrence Williams pleaded guilty in the Circuit Court of Cook County on March 11, 1975, to a single charge of burglary, which at the time carried a penalty of one to twenty years imprisonment plus a mandatory three-year parole term. Ill. Rev. Stat. Ch. 38, §§119-1, [*sic*] 1105-8-1(b)(3), 1005-8-1(c)(3), 1005-8-1(e)(2). Under the terms of a plea agreement reached by Williams' public defender and the prosecutor, Williams was to receive an indeterminate sentence of one to two years in prison.

Before accepting the guilty plea, the trial judge admonished Williams of its consequences, elicited Williams' understanding and acceptance of the terms of the plea agreement, and indicated that the court would accept the recommended sentence. The judge then received Williams' acknowledgement that he understood the nature of the charges and his constitutional rights. A factual basis for the plea was established, and Williams indicated that he understood that by pleading guilty he admitted those facts. After advising Williams of the statutory penalty of one to 20 years imprisonment and hearing evidence in aggravation and mitigation of the offense, the trial judge sentenced Williams to not less than one nor more than two years in prison. The transcript contains no statement by the court, the prosecutor or the public defender that the recommended and actual sentence included a mandatory three-year parole term. Nor does the mandatory parole term appear on the sentencing order.

Williams completed his sentence on May 20, 1976, and was at that time released on parole. Williams claimed to have been unaware of the mandatory parole term until two months prior to his discharge. While serving the parole term, Williams was arrested on March 16, 1977, charged as a parole

violator. He was reincarcerated at Stateville Correctional Center in Joliet, Illinois, on this charge when the Writ of Habeas Corpus was issued in *Williams I*. Before the denial of the State's Motion to Reconsider in *Williams I* took effect, Williams was released on a six months "mandatory supervisory release term" on February 1, 1978, pursuant to Ill. Rev. Stat. Ch. 38 § 1005-8-1. This revised law also had the effect of reducing Williams' parole term from three to two years. The period of mandatory release expired on August 1, 1978, at which time Williams was released from the custody of the Illinois Department of Corrections. He had been in the custody of the state for three years and four and one-half months, including 28 months in prison.

Oscar Southall

Petitioner Oscar Southall pleaded guilty in the Circuit Court of Cook County on March 19, 1975, to a single charge of burglary carrying the same penalty of one to 20 years followed by three years of mandatory parole. Pursuant to the plea agreement reached by his public defender and the prosecutor and ratified by the court, Southall was to receive an indeterminate sentence of one to two years in prison. The proceeding at which the trial judge accepted Southall's plea and sentenced him to one to two years in prison does not differ significantly from the above-described proceeding involving Lawrence Williams. Again, the transcript contains no statement by the prosecutor, the public defender or the trial judge that the recommended and actual sentences included a mandatory three year parole term. Again, the sentencing order contains no reference to a mandatory parole term.

Southall completed his sentence and was released on parole on September 22, 1975. He was declared a parole violator on October 8, 1976, and reincarcerated. He was subsequently reparoled and eventually discharged from the custody of the

Illinois Department of Corrections on October 24, 1979. Southall had been in the custody of the state for approximately four years and seven months, including 23 months in prison.

Emanuel Williams

Petitioner Emanuel Williams' case involves two guilty pleas. The first was entered on July 31, 1974, in the Circuit Court of Cook County to a charge of burglary carrying a penalty of one to 20 years imprisonment plus three years mandatory parole. Williams was sentenced in accordance with the prosecution's recommendation to one to three years in prison.[3] There is no indication in the transcript of the proceedings at which the plea was entered and Williams was sentenced that he was informed by his attorney, the prosecutor or the court that he would be subject to a mandatory parole term. There is no reference to a mandatory parole term in the sentencing order.

Two days later, on August 2, 1974, Williams entered a guilty plea in the same court to a charge of theft which, because it involved more than $150, carried a penalty of one to ten years imprisonment and a mandatory three-year parole term. The guilty plea was entered pursuant to an agreement between Williams' attorney and the prosecutor calling for a

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[3] It is not clear from the transcript whether the recommended and actual sentences were made pursuant to a plea agreement or not. Judge Marshall initially found that the adequacy of the first guilty plea was not ripe for summary judgment. 447 F.Supp. at 105. Subsequently, he must have determined that the plea was made pursuant to a plea bargain because his order granted the relief sought with respect to this plea (State's Br. at A 7). In any event, the State does not challenge the order with respect to this plea on the basis of the factual record.

recommended sentence of one to three years in prison. The trial judge, who was not the same judge as in the July 31 proceeding, accepted the prosecution's recommendation in sentencing Williams, but did not participate in or ratify the plea agreement prior to accepting Williams' plea. The judge also warned Williams that a mandatory parole term was included in the maximum sentence for the charge to which Williams sought to plead guilty. He was not told that a mandatory parole term attached to the prison term negotiated by his attorney and the prosecution.

As a result of the two guilty pleas, Williams was imprisoned to serve concurrent sentences of one to three years. He was released on parole on August 23, 1976, but was returned to prison on December 10, 1976, for a parole violation. Williams was released again (on a $5,000 recognizance bond) following the decision in *Williams I*. His sentence, including the statutory parole term, expired on September 17, 1978. Williams had been in custody of the state for approximately four years and four and one-half months, including 27 months in prison.

II

In *United States* ex. rel. *Baker v. Finkbeiner, supra*, this Court held that the failure to inform a state criminal defendant of a mandatory parole term accompanying his negotiated prison sentence violated the Due Process Clause of the Fourteenth Amendment. Baker had pleaded guilty to two criminal charges pursuant to a plea agreement ratified by the trial court under which he was told he would receive a sentence of one to two years in prison. He was never informed by his attorney, the prosecutor or the court that in actuality his sentence would include a mandatory two-year parole term. After his release from prison, Baker was arrested as a parole violator and reincarcerated. The district court denied his

petition for collateral relief. This Court reversed, holding that the mandatory parole term constituted a substantial addition to the one to two years imprisonment Baker was promised and that therefore he had been deprived of the benefit of his plea bargain in violation of the Due Process Clause. We ordered the parole term expunged and Baker released from custody, reasoning that since Baker had performed his part of the bargain, the state should be held to its promise.

Before turning to the applicability of *Baker* to the petitioners here, we address the State's threshold argument that *Baker* must be overruled in light of *United States v. Timmreck*, ____ U.S. ____, 47 L.W. 4577. *Timmreck* involved a federal defendant who pleaded guilty on advice of counsel to a charge carrying a maximum penalty of 15 years in prison and a $25,000 fine plus a mandatory parole term of at least three years. In the Rule 11 (Fed. R. Crim. Pro.) proceeding, the district court judge properly advised defendant of the maximum prison term and fine but failed to inform him of the mandatory parole term. The judge accepted Timmreck's guilty plea and in a later proceeding sentenced him to ten years in prison plus a parole term of five years and a fine of $5,000. Timmreck neither objected to the sentence at the time it was pronounced nor appealed his conviction, but later moved to vacate the sentence on the ground that the trial judge had violated Rule 11 by accepting the plea without admonishing him of the mandatory parole term. The Supreme Court, reversing the Sixth Circuit, held that a technical violation of Rule 11 resulting in no prejudice to the defendant and which could have been raised on direct appeal will not support collateral relief. In so doing, the Court expressly declined to decide whether collateral relief "would be available if a violation of Rule 11 occurred in the context of other aggravating circumstances." 47 L.W. at 4579. Cf. *Hill v. United States*, 368 U.S. 424.

We think it plain from the foregoing summaries that the holding in *Baker* is in no way inconsistent with that of *Timmreck*. Unlike *Timmreck*, *Baker* involved not merely a technical violation of proper procedure but a complete failure to inform the defendant at any time that he would in fact be in the custody of the state for a period of three to four years (including parole) rather than the one to two years he had been promised. Moreover, unlike Timmreck, whose combined prison and parole terms were within the maximum penalty he had been warned he could receive and who had never been promised less than the maximum, Baker was prejudiced in that he received a sentence calling for two years of custody (on parole) more than he had bargained for. In short, the two cases are not only not "on all fours" as the State acknowledges, but wholly different. We therefore find no cause to reexamine the decision in *Baker*.

III

The State's first alternative argument is that even if *Baker* is still good law, it is not applicable on its facts to the guilty plea of petitioner Southall or the second guilty plea of petitioner Emanuel Williams.[4] With respect to Southall, the State contends that since he had bargained for as much as three years in prison and actually served only 23 months, his case falls outside *Baker* and within *Bachner v. United States*, 517 F.2d 589 (7th Cir. 1975).

In *Bachner*, we held that the failure to inform a defendant of a mandatory parole term was not an error of constitutional magnitude where the sentence imposed did not exceed the

---

[4] The State concedes that Lawrence Williams' case is factually indistinguishable from *Baker* (Br. at 22). As noted, *supra* note 3, the State does not challenge the factual applicability of *Baker* to Emanuel Williams' guilty plea of July 31, 1974.

maximum sentence the defendant was informed he would receive. What distinguishes *Bachner* from *Baker* is, first, that there was no plea agreement so that the defendant had no basis for expecting anything less than the maximum statutory sentence when he pleaded guilty and, second, that the sentence imposed including the mandatory parole term was within the maximum penalty defendant had been warned he could receive. Therefore, the defendant in *Bachner* was not prejudiced or deprived of the benefit of his plea bargain by the judge's failure to advise him of the mandatory parole term.

Southall's case is like *Baker*, not *Bachner*, in that Southall received a total sentence, including the three-year parole term, that exceeded the sentence he had bargained for and was promised. The State in effect asks us to ignore the additional parole term because Southall was actually incarcerated for less than the maximum three years of his negotiated plea. But, as we stated in *Baker*, "the conditions of parole place a number of onerous burdens on the liberty of paroled individuals," including the possibility of being returned to prison for technical parole violations. 551 F.2d at 184. While it is true that the defendant in *Baker* ended up spending 32 months in prison on a promised maximum sentence of two years imprisonment, it was the parole term itself with its concomitant burdens that we found to be a substantial addition to the negotiated sentence and not the additional time in prison resulting from the parole violation. In other words, a defendant does not have to violate his mandatory parole term and be reincarcerated for a total period in excess of the maximum negotiated sentence before he can object under *Baker* that the sentence imposed differed substantially from that which he was promised as an inducement to plead guilty. See *United States* ex rel. *Ferris v. Finkbeiner*, 551 F.2d 187 (7th Cir. 1977).

With respect to Emanuel Williams' guilty plea of August 2, 1974, the State argues that *Bachner* is controlling because the trial court was not a party to any plea agreement. We agree. Although the trial judge at the time of sentencing accepted the prosecution's recommendation for a sentence of one to three years imprisonment "as per agreement" (Pets. Br., App. B, at 8), the agreement referred to was one between Williams' attorney and the prosecutor only. Because the trial judge neither participated in nor ratified the agreement prior to accepting Williams' plea, it was not binding on the court. Moreover, the judge explicitly so warned the defendant:

> THE COURT: Mr. Orange, also known as Mr. Williams, although an agreement as to the penalty has been reached between your attorney and the State's Attorney, the Court is not bound to accept those terms; I could impose a lesser or a greater penalty in this case. Do you understand this?
>
> DEFENDANT: Yes, sir.
>
> THE COURT: Knowing that, do you still wish to plead guilty?
>
> DEFENDANT: Yes. (Pets. Br., App. B, at 7-8).

Thus like the defendant in *Bachner* and unlike the defendant in *Baker,* Emanuel Williams had no basis for expecting anything less than the statutory maximum. He was warned of this maximum, including the mandatory parole term. Judge Marshall found this warning insufficient for the purposes of informing Williams that a mandatory parole term would be part of the plea he had negotiated with the prosecutor because it was made in the context of the maximum sentence Williams could get under the law. Whether this finding was correct or, as the State contends, erroneous, we need not decide because there was no plea agreement binding on the court. Because the sentence imposed including the mandatory parole term was far less than the maximum period of

imprisonment Williams was warned he could receive, he would not have been prejudiced even if the judge had failed to mention the parole term altogether. Indeed, that would be the *Bachner* case. Accordingly, we reverse the order with respect to Emanuel Williams' guilty plea of August 2, 1974.

IV

With respect to petitioners Southall and Lawrence Williams, the State's alternative position is that *Baker* established a new and unexpected rule of law entitled only to prospective application and was therefore erroneously applied here to guilty pleas entered prior to March 17, 1977, the date *Baker* was decided. The State raised this issue for the first time on a Motion to Reconsider in *Williams I*. Judge Marshall rejected the argument on the grounds that *Baker* did not create a new and unexpected rule of law and that even if it had it would be entitled to retroactive application under the balancing test set forth in *Stoval v. Denno*, 388 U.S. 293. See 447 F. Supp. at 105-108. We agree with both the reasoning and conclusion of Judge Marshall's thorough opinion on this issue and therefore adopt it as our own.

The judgment is reversed with respect to the August 2, 1974, guilty plea of petitioner Emanuel Williams and in all other respects affirmed.

A True Copy:
Teste:

/s/ Shailot Vack, Deputy
Clerk of the United States
Court of Appeals for the
Seventh Circuit

OSCAR SOUTHALL

OSCAR SOUTHALL

June 16, 1977 — Received petition for writ of habeas corpus.

June 16, 1977 — Filed civil cover sheet.

June 16, 1977 — Filed petition to file and proceed in forma pauperis.

June 21, 1977 — Enter order dated June 20, 1977: Enter order granting leave to proceed in forma pauperis. Respondent ordered to answer or otherwise plead within 20 days after receiving the petition. MARSHALL, J.

June 21, 1977 — Filed petition for writ of habeas corpus and one copy.

July 5, 1977 — Enter order dated July 1, 1977: Respondent is ordered to answer or otherwise plead on or before July 21, 1977. MARSHALL, J.

July 21, 1977 — Filed respondent's motion to dismiss; notice.

August 10, 1977 — Enter order dated August 9, 1977: Defendant's motion to dismiss taken under advisement. Plaintiff to respond by September 8, 1977. Defendant to reply by September 23, 1977. Court to rule by mail. MARSHALL, J.

August 18, 1977 — Filed petitioner's reply to states [*sic*] motion to dismiss with exhibit attached.

September 16, 1977 — Filed respondent's Motion to supplement Exhibits, Notice, Exhibits.

January 5, 1978 — Enter order dated January 4, 1978: For the reasons stated in the attached Memorandum Opinion, respondent's motion to dismiss is denied and judgment will enter declaring void the mandatory parole term imposed on Oscar Southall in No. 75-228 in the Circuit Court of Cook County, Illinois and respondent is ordered to release

Oscar Southall forthwith. (DRAFT. See attached Memorandum Opinion).

January 5, 1978 — Enter Rule 58 Judgment by the Clerk dated January 4, 1978.

January 10, 1978 — Filed defendant's [sic] notice; motion for stay.

January 11, 1978 — Enter order dated January 10, 1978: Respondent's motion for a stay of the order of Judge Marshall dated January 4, 1978, ordering the release of the petitioner is granted to and until January 16, 1978. Respondent's motion to reconsider shall be filed by January 13, 1978. Cause set for hearing on respondent's motion for stay before Judge Marshall on January 16, 1978 at 9:30 a.m. FLAUM, J.

January 13, 1978 — Filed respondent's motion to reconsider; Notice; attachments.

January 17, 1978 — Enter order dated January 16, 1978: Order of January 4, 1978 is stayed until further order of court. Cause set for ruling on January 25, 1978 at 9:30 a.m. MARSHALL, J.

January 31, 1978 — Enter order dated January 27, 1978: Enter order appointing Martha Jenkins to represent plaintiff under Criminal Justice Act. Cause set for status hearing on February 6, 1978 at 9:30 a.m. MARSHALL, J.

February 1, 1978 — Enter order dated January 27, 1978: For the reasons stated in the attached Memorandum Opinion, we hold that *United States ex rel. Baker v. Finkbeiner* is to be given full retroactive effect. Respondent's motion to reconsider is denied. (DRAFT. See attached Memorandum Decision). MARSHALL, J.

February 24, 1978 — Filed defendant's [sic] notice of appeal.

June 1, 1978 — Filed copy of transcript from Circuit Court No. 75-228 labeled Exhibit A.

June 1, 1978 — Filed stipulation re: supplement to record on appeal.

June 12, 1978 — Certified and transmitted to USCA 7th Circuit the supplement to the record on appeal consisting of Exhibit A filed June 1, 1978 and the stipulation to supplement the record on appeal filed June 1, 1978.

May 1, 1979 — Filed April 30, 1979 Opinion Nos. 78-1321, 78-1322, 78 C [sic] 1323, 78-1380.

May 1, 1979 — Filed April 30, 1979 Certified copy of order from the U.S.C.A., 7th Circuit dated March 13, 1979: . . . It is ordered and adjudged by this court that the judgment of the said District Court in these causes appealed from be and the same are hereby, REVERSED and REMANDED with directions. . . (to dismiss the petition but with [*sic*] prejudice. . . .)

May 17, 1979 — Enter order dated May 17, 1979: Status hearing held. Case assigned to Judge Marshall's past calendar until further order of court. MARSHALL, J.

October 18, 1979 — Filed October 12, 1979 Petitioner's Notice of Motion; Motion for Ruling expunging terms of mandatory parole for petitioners.

October 18, 1979 — Enter order dated October 12, 1979: Respondent to answer petitioner's motion for expunging terms of mandatory parole by October 26, 1979. Reply to answer to be filed by November 2, 1979. Ruling to be made by mail. MARSHALL, J.

October 26, 1979 — Filed October 26, 1979 Response to Petitioner's Motion for Ruling Expunging Terms of Mandatory Parole for Petitioners.

November 6, 1979 — Filed November 2, 1979 plaintiff's reply memorandum in support of petitioner's motion to expunge mandatory parole terms.

February 8, 1980 — Enter order dated February 1, 1980: For the reasons stated in the attached memorandum decision, we hold that the denial of leave to appeal in McCullim [sic], when considered with the precedent from the appellate courts, demonstrates anew the futility of [sic] state remedy. Accordingly judgment will enter expunging petitioners mandatory parole terms. DRAFT. MARSHALL, J.

February 8, 1980 — Enter order February 5, 1980: Judgment will enter declaring void the mandatory parole term imposed on Oscar Southall in No. 75-228 in the Circuit Court of Cook County, Illinois, and respondent is ordered to release Oscar Southall forthwith from any detainer or detention occasioned by the mandatory parole term imposed in No. 75-228. DRAFT. MARSHALL, J.

February 27, 1980 — Enter order dated February 26, 1980: Enter order granting respondent's motion to alter or amend the judgments entered in the above cases. MARSHALL, J.

February 27, 1980 — Filed February 26, 1980 respondent's motion to alter or amend the judgments entered in the above-entitled cases; affidavit; notice.

March 4, 1980 — Filed March 4, 1980 Joint Notice of Appeal by respondent appealing order of February 5, 1980.

March 5, 1980 — Transmitted March 5, 1980 to U.S.C.A., 7th Circuit Information Sheet, copy of docket entries and copy of Notice of Appeal.

PETITION FOR WRIT OF HABEAS CORPUS
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

PERSONS IN STATE CUSTODY

United States of America ex rel
Oscar Southall #63512
Petitioner

-vs- Case Number 77 C 2184

Thaddeus E. Pinkney (Warden at
Pontiac Correction [*sic*] Center,
Pontiac Illinois).
Respondent

Instructions — Read Carefully

In order for this petition to receive consideration by the District Court, it shall be in writing (legibly handwritten or typewritten), signed by the petitioner and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary petitioner may finish his answer to a particular question on the reverse side of the page or on an additional blank page. Petitioner shall make it clear which question any such continued answer refers to.

Since every petition for habeas corpus must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Petitioners should, therefore, excercise care to assure that all answers are true and correct.

If the petition is taken in *forma pauperis*, it shall include a petition for leave to file and to proceed in forma pauperis, and an Affidavit of financial status. When all of the forms are completed, the original and one copy shall be mailed to the Clerk of the District Court for the Northern District of Illinois.

1. Place of detention: Pontiac Correction [*sic*] Center. Pontiac, IL 61764
2. Name and location of court which imposed sentence: Criminal Court of Cook County, Illinois. 2600 So. California Ave. Chicago, IL 60608
3. The indictment number or numbers (if known) upon which, and the offense or offenses for which, sentence was imposed:
   (a) Indictment Number 75-228
   (b) _____
   (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
   (a) Sentence date: 3-19-75. Term of Sentence: One to three years.
   (b) _____
   (c) _____
5. Check whether finding of guilty was made
   (a) after plea of guilty (yes)
   (b) after a plea of not guilty_____
   (c) after a plea of *nolo contendere*_____

6. If you were found guilty after a plea of not guilty, check whether that finding was made by:

   (a) a jury_____

   (b) a judge without a jury_____

7. Did you appeal from the judgment of con iction or the imposition of sentence? _____

8. If you answered "yes" to (7), list

   a) the name of each court to which you appealed:

      i. _____

      ii. _____

      iii. _____

   b) the result in each court to which you appealed:

      i. _____

      ii. _____

      iii. _____

   c) the date of each result:

      i. _____

      ii. _____

      iii. _____

   d) if known, citations of any written opinion or orders entered pursuant to such results:

      i. _____

      ii. _____

      iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

   (a) I pleaded guilty with the stipulation that I would be obligated to serve three (3) years. The three (3) years have expired and I am now being detained on violation of a mandatory parole which was not a condition of my sentence. Thus my petition for a Writ of Habeas Corpus.
   I did not file previously because I was not previously aware that I would be detained on violation of mandatory parole.

   (b)

   (c)

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

   (a) I was sentenced to a term of one to three years on Indictment Number 75-228. The sentence has expired and I am now being held on violation of a mandatory parole which was not a condition of my sentence as I was not admonished of such condition by the sentencing Court. The records will show that my sentence began October 8, 1974 (the date of my arrest), and with the good time earned for good behavior, my discharge date is pass [*sic*] due. Wherefore I pray this Honorable Court will issue its Writ of Habeas Corpus and order petitioner's immediate release.

   (b)

   (c)

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

    (a) The transcript of sentencing procedure relative to Indictment Number 75-228, will support the facts stated above, relative to my one to three year sentence.

    The Institution record office will verify that I have served the maximum on the three years imposed by the sentencing Court.

    (b)

    (c)

12. Prior to this petition have you filed with respect to this conviction: No

    (a) any petition in a state court under the Illinois Post-Conviction Hearing Act, Ill. Rev. Stat. ch. 38, sec. 122? No

    (b) any petition in a state court by way of statutory *coram nobis*. Ill. Rev. Stat. ch. 110, sec. 72? No

    (c) any petitions in state or federal courts for habeas corpus? No

    (d) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

    (e) any other petitions, motions or applications in this or any other court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

    (a) the specific nature thereof:

        i. _____

        ii. _____

iii. _____

iv. _____

(b) the name and location of the court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other court, state or federal, in any petition, motion or application which you have filed? _____

15. If you answered "yes" to (14), identify:

    (a) which grounds have been previously presented:

        i. _____

        ii. _____

        iii. _____

    (b) the proceedings in which each ground was raised:

        i. _____

        ii. _____

        iii. _____

16. If any ground set forth in (10) has not previously been presented to any court, state or federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

    (a)

    (b)

    (c)

17. Were you represented by an attorney at any time during the course of

    (a) your arraignment and plea? Public Defender

    (b) your trial, if any? _____

    (c) your sentencing? Public Defender

    (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction which you filed? _____

18. If you answered "yes" to one or more parts of (17), list

(a) the name and address of each attorney who represented:

i. _____

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. _____

ii. _____

iii. _____

19. If you are seeking leave to proceed in *forma pauperis*, have your completed the sworn affidavit setting forth the required information (see instructions, page 1 of this form)? Yes

/s/ Oscar Southall

Signature of Petitioner

)
) ss
)

/s/ Oscar Southall, being first sworn under oath, presents that he has subscribed to the above and does state that the information therein is true and correct to the best of his knowledge and belief.

Oscar Southall

Signature of Affiant

SUBSCRIBED AND SWORN to
before me this 14th day
of June, 1977.

/s/ Donald J. [Illegible]
Notary Public

My commission expires

3-15-78

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Honorable Prentice H. Marshall

January 4, 1978

UNITED STATES OF AMERICA ex rel. OSCAR SOUTHALL v. THADDEUS E. PINKNEY, Warden, Pontiac Correctional Center

ORDER

* * *

For the reasons stated in the attached Memorandum Opinion, respondent's motion to dismiss is denied and judgment will enter declaring void the mandatory parole term imposed on Oscar Southall in No. 75-228 in the Circuit Court of Cook County, Illinois and respondent is ordered to release Oscar Southall forthwith.

(DRAFT. See attached Memorandum Opinion.)

UNITED STATES DISTRICT COURT
for the
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Civil Action File No. 77 C 2184

U.S.A. ex rel Oscar Southall

vs.

Thaddeus E. Pinkney

JUDGMENT

This action came on for (hearing) before the Court, Honorable Prentice H. Marshall, United States District

Judge, presiding, and the issues having been duly (heard) and a decision having been duly rendered.

It is Ordered and Adjudged respondent's motion to dismiss is denied and judgment will enter declaring void the mandatory parole term imposed on Oscar Southall in No. 75-228 in the Circuit Court of Cook County, Illinois and respondent is ordered to release Oscar Southall forthwith.

Dated at Chicago, Illinois, this 4th day of January, 1978.

H. STUART CUNNINGHAM
Clerk of Court

By: /s/ Rita L. Dumas
Deputy Clerk

(Title omitted in printing)

NOTICE OF APPEAL

Notice is hereby given that respondents hereby appeal to the United States Court of Appeals for the Seventh Circuit from an order of January 4, 1978 entered herein granting a writ of *habeas corpus* and from the final order of January 27, 1978 entered herein denying respondent's motion to reconsider.

Respectfully submitted,

WILLIAM J. SCOTT
Attorney General
State of Illinois

BY: /s/ Patrick J. Calihan
Assistant Attorney General
188 W. Randolph St.,
Suite 2200
Chicago, Illinois 60601
(312) 793-2570

(Notice and affidavit of service omitted in printing)

EXHIBIT A

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT – CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS	)	
vs.	)	Indictment No. 75-228
	)	Charge: Burglary
OSCAR SOUTHALL	)	

REPORT OF PROCEEDINGS
CHANGE OF PLEA

BE IT REMEMBERED that on the 19th day of March, A.D. 1975, this cause came on for trial before the Honorable EARL E. STRAYHORN, Judge of said Court, upon the Indictment herein, and the following proceedings were had:

APPEARANCES:

HON. C. BERNARD CAREY,
State's Attorney of Cook County, by

MR. MARK ZUBOR, and
MR. TERRY EKL,
Assistant State's Attorneys,
appeared for the People;

MR. JAMES J. DOHERTY,
Public Defender of Cook County, by
MR. WILLIAM O'NEAL,
Assistant Public Defender,
appeared for the Defendant.

[2] THE CLERK: People of the State of Illinois versus Oscar Southall.

MR. O'NEAL: Judge, that is the one I was talking to the State with.

THE COURT: All right, pass it.

(After an interval of time, the following proceedings were had:)

THE CLERK: People of the State of Illinois versus Oscar Southall.

MR. O'NEAL: Judge, this is Oscar Southall. This is Indictment No. 75-228. On 2-19-75, there was a conference with the State and the Court and your Honor indicated he would give Mr. Southall one to three years.

We had a problem in that Southall also is on probation before Judge Strzalka and it is my understanding that Judge Strzalka will terminate probation or if he violates him, give him one to three to run concurrent with this sentence.

So based on those allegations, Mr. Southall will withdraw his plea of not guilty and enter a plea of guilty.

THE COURT: Mr. Southall, you have heard your attorney Mr. O'Neal indicate that you wish to plead [3] guilty to this offense.

You are charged in this indictment with the offense of burglary. You understand that on a charge of burglary, you

run the possibility of having me impose a sentence upon you of a minimum of one year and a maximum not to exceed 20 years in the Illinois Department of Corrections and impose a fine upon you from $1 to $10,000; do you understand that that is a possibility?

THE DEFENDANT: Yes.

THE COURT: Those are the limits of the sentence that I can impose upon you even on a plea of guilty, do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand further that by pleading guilty, you are in effect withdrawing your persistence in your demand for trial. You have a right to stand on your demand for trial. You have a right to persist in your demand to be tried on this case. But by pleading guilty, you are in effect withdrawing that demand which you have made by pleading not guilty to have a trial in this case, do you understand that?

THE DEFENDANT: Yes, sir, I understand.

[4] THE COURT: Do you further understand by pleading guilty, you will lose two very important personal constitutional rights that are personal to you. One, you will lose your right to a trial by jury or if you didn't wish to have a jury, the right to be tried by this Court without a jury; and, second, you will lose your right to demand that the prosecution bring all of the witnesses that will testify against you in this case into open court and have those witnesses confront you in your sight, presence and hearing, and after being sworn, testify and be subjected to cross examination by your counsel.

Each of those are personal individual constitutional rights that you have that are personal to you and by pleading guilty, you will lose each one of those constitutional privileges, do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Has anyone used any force on you, abused you, threatened you, put you under any duress, given you any promises of any reward aside from the conference results in order to force you or induce you to plead guilty to this indictment?

THE DEFENDANT: No.

[5] THE COURT: Coming back to the conference results, in the course of the conference, it was disclosed to the Court that you are presently on probation to Judge Chester Strzalka on another matter that was pending before him in which he had placed you on probation for a period of two years in June or thereabouts of 1974. Your counsel was concerned as to what Judge Strzalka's position would be in the event you chose to plead guilty in this indictment or was found guilty in this indictment.

As a result, I spoke to Judge Strzalka by telephone this morning and advised him of the fact that you were in my courtroom and of the charge that you were standing before me on and told him that you were one of his probationers, advised him of what my sentence would be on your plea of guilty as a result of the plea bargaining and asked him what his position would be, and he advised me and authorized me to tell your counsel and the State's Attorney that if you chose to plead guilty to this indictment and if the Court, this Court, sentenced you to a term of a minimum of one year and a maximum not to exceed three years, that if he violated your probation, he would impose the same sentence upon you on a violation [6] of probation and make the sentence run concurrent or he might order the probation revoked and terminated as being unsatisfactory.

He also requested that the State's Attorney of the Court, that he request the State's Attorney to write Judge Strzalka a letter advising him of what this Court is putting on the record with reference to what Judge Strzalka has stated to me so that he will be reminded whenever this matter comes before him of what he stated this morning.

Those are the conference results. That is the sentence which will be imposed by the Court as a result of the conference, and the record should indicate the defendant has been duly warned of the consequences of his plea and after so being warned, persists. And the record should also disclose the Court has set forth in open court on the record the precise terms of the plea bargaining conference, would impose that sentence and the Court has placed on the record by the authority of Judge Strzalka his statement concerning the disposition of his matter that the defendant has before Judge Strzalka on the violation of probation.

Mr. State's Attorney.

[7] MR. ZUBOR: Your Honor, I believe it will be stipulated between the parties, namely, Mr. Oscar Southall present before the court represented by his attorney, Mr. O'Neal; and the People of the State of Illinois, State's Attorney Bernard Carey and his Assistants here in court, that on today's date the age of the defendant Mr. Southall is —

THE DEFENDANT: 27.

MR. ZUBOR: —27 years of age.

THE CLERK: 27?

MR. O'NEAL: 27.

MR. ZUBOR: That venue for this matter properly lies before this court, the event, the incident in the indictment having taken place in the City of Chicago, County of Cook and State of Illinois; so stipulated?

MR. O'NEAL: So stipulated.

MR. ZUBOR: It will be further stipulated by and between the same parties that if various individuals were called to testify, namely Ronnie, R-o-n-n-i-e, Hardy, H-a-r-d-y, Officer Ulleweit, U-l-l-e-w-e-i-t, Star No. 12182 and Officer McInerney — McIntyre, excuse me, M-c-I-n-t-y-r-e, Star No. 3463, their collective testimony would be that on October [8] 8, 1974, at approximately 3:40 P.M., police officers had occasion to be in the vicinity of 2422 East 74th Street in the City of Chicago, County of Cook and State of Illinois. At that time

they were responding to a call of a burglary in progress at that location.

Upon arrival at that location, they arrested Oscar Southall exiting that building carrying with him two rifles. The defendant was placed under arrest, advised of his constitutional rights, and taken to the police station.

The rifles, one BB gun and one other rifle were identified by Ronnie Hardy as being his property and having been his property on that date and that he did not give anyone permission to enter his apartment, to take these items from his apartment which were in there when he left his apartment that day, and specifically he did not give Oscar Southall permission to enter his premises and take those items from his premises.

He identifies those weapons as being weapons that were registered to him and that were in his apartment on that day.

So stipulated?

[9] MR. O'NEAL: So stipulated.

THE COURT: Let the record show there is a sufficient factual basis to accept the plea. The plea will be accepted. There will be a finding of guilty on the plea of guilty finding the defendant Oscar Southall guilty of the offense of burglary in manner and form as charged in the indictment. Judgment will be entered on the finding.

Will there be a waiver of pre-sentence?

MR. O'NEAL: Yes.

THE COURT: Pre-sentence in this case will be waived. A waiver form will be filed.

We will proceed to a hearing in aggravation and mitigation. Mr. State's Attorney what do you have in aggravation?

MR. ZUBOR: Your Honor, the State would have nothing over and above that which was discussed in the conference. For the record, the indictment under which Mr. Southall is presently on probation is Indictment No. or excuse me, Information No. 74-1289 in which he received two years probation from Judge Strzalka on May 24 of 1974.

THE COURT: Mr. O'Neal, mitigation?

MR. O'NEAL: I have nothing in mitigation.

[10] THE COURT: Mr. Southall, do you wish to say anything before I impose sentence?

THE DEFENDANT: No, sir.

THE COURT: It is the sentence of this Court, Oscar Southall, that you be taken from the bar of this court, remanded to the custody of the officials of the Department of Corrections, State of Illinois, for incarceration in a penal institution of this state for a minimum period of one year and a maximum period not to exceed three years.

Mittimus to issue forthwith.

Take him away.

(Which were all the proceedings had on the change of plea in the above-entitled cause.)

(Court reporter's certificate omitted in printing)

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Honorable Prentice H. Marshall

Feb. 5, 1980

Judgment Order

* * *

Judgment will enter declaring void the mandatory parole term imposed on Oscar Southall in No. 75-228 in the Circuit Court of Cook County, Illinois, and respondent is ordered to release Oscar Southall forthwith from any detainer or detention occasioned by the mandatory parole term imposed in No. 75-228. Draft

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA ex rel.
LAWRENCE WILLIAMS,
Petitioner,

v. No. 77 C 2402

ERNEST MORRIS, Warden,
Respondent.

UNITED STATES OF AMERICA ex rel.
OSCAR SOUTHALL,
Petitioner,

v. No. 77 C 2184

THADDEUS E. PINCKNEY, Warden, Pontiac
Correctional Center,
Respondent.

UNITED STATES OF AMERICA ex rel.
EMANUEL WILLIAMS,
Petitioner,

v. No.77 C 1937

PEOPLE OF THE STATE OF ILLINOIS,
Respondents.

JUDGEMENT

In 77 C 2402, United States of America ex rel. Lawrence Williams v. Ernest Morris, Warden, judgment will enter declaring void the mandatory parole term imposed on Lawrence Williams in No. 74-3339 in the Circuit Court of Cook County, Illinois.

In 77 C 2184, United States of America ex rel. Oscar Southall v. Thaddeus E. Pinkney, Warden, Pontiac Correctional Center, judgment will enter declaring void the mandatory parole term imposed on Oscar Southall in No. 75-228 in the Circuit Court of Cook County, Illinois, and respondent is ordered to release Oscar Southall forthwith from any detainer or detention occasioned by the mandatory parole term imposed in No. 75-228.

In 77 C 1957, United States of America ex rel. Emanuel Williams v. State of Illinois, judgment will enter declaring void the mandatory parole terms imposed on Emanuel Williams in No. 74-2032 in the Circuit Court of Cook County, Illinois and the mandatory parole term imposed on Emanuel Williams in No. 74-951 in the Circuit Court of Cook County, Illinois.

ENTER:

/s/ Prentice H. Marshall
United States District Judge

DATED: February 5, 1980

(Title omitted in printing)

JOINT NOTICE OF APPEAL

Notice is hereby given that ERNEST MORRIS, THADDEUS E. PINKNEY and the PEOPLE OF THE STATE OF ILLINOIS, respondents above named, hereby appeal to the United States Court of Appeals for the Seventh Circuit from the final judgments entered in these consolidated actions on the 5th day of February, 1980, as well as the subsequent orders entered in these consolidated actions on the 26th day of February, 1980.

Respectfully submitted,

WILLIAM J. SCOTT
Attorney General
State of Illinois

By /s/ Michael B. Weinstein
Assistant Attorney General
188 W. Randolph Street
(Suite 2200)
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(312) 793-2570

Attorney for respondents.

(Notice and affidavit of service omitted in printing)

Opinion by Judge Cummings

JUDGMENT – ORAL ARGUMENT

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

October 22, 1980

Before
Hon. WALTER J. CUMMINGS, Circuit Judge
Hon. ROBERT A. SPRECHER, Circuit Judge
Hon. WILLIAM J. BAUER, Circuit Judge

UNITED STATES OF AMERICA ex rel. LAWRENCE WILLIAMS, OSCAR SOUTHALL and EMANUEL WILLIAMS, Petitioners-Appellees, No. 80-1296 vs. ERNEST MORRIS, Warden, Stateville Correctional Center; THADDEUS E. PINKNEY, Warden, Pontiac Correctional Center; and PEOPLE OF THE STATE OF ILLINOIS, Respondents-Appellants.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division Nos. 77-C-2402, 77-C-2184 and 77-C-1937 Prentice H. Marshall, Judge

This cause was heard on the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District Court

in this cause appealed from be, and the same is hereby, AFFIRMED IN PART AND REVERSED IN PART, in accordance with the opinion of this court filed this date.

(Certification omitted in printing)